

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BOYSIN LORICK and CYNTHIA LORICK,

Plaintiffs,

v.

KILPATRICK TOWNSEND AND STOCKTON LLP;
COLIN M. BERNARDINO; KEITH BRANDOFINO;
JOHN M. CHURCH; SUMIT JAIN; WATERSTONE
ASSET MANAGEMENT; WELLS FARGO BANK
NA; and BERKADIA COMMERCIAL MORTGAGE,

Defendants.

Civil Action File No.
18-cv-07178

**DECLARATION OF FREDERICK L. WHITMER IN SUPPORT OF
MOTION FOR DISMISSAL OF THE SECOND AMENDED COMPLAINT**

I, Frederick L. Whitmer, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at law duly licensed and authorized to practice law in the State of New York and a partner in the firm of Kilpatrick Townsend & Stockton LLP, attorneys for defendants Kilpatrick Townsend & Stockton LLP incorrectly s/h/a Kilpatrick Townsend and Stockton LLP (“KTS”), Colin M. Bernardino and Keith Brandofino (“Brandofino”) (collectively, the “Kilpatrick Defendants”).

2. I submit this declaration in support of the Kilpatrick Defendants’ application, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of the Second Amended Complaint, dated May 11, 2020 (the “SAC”), as against the Kilpatrick Defendants.

3. Annexed hereto as Exhibit “A” is a copy of a complaint filed in the Supreme Court for the State of New York, County of Kings (the “State Court”) under Index Number 500469/2013 (the “Foreclosure Action”).

4. Annexed hereto as Exhibit “B” is a copy of a Stipulation of Settlement and Order (the “Stipulation”), so-ordered by the Honorable Bernard J. Graham, J.S.C., issued in the Foreclosure Action.

5. Annexed hereto as Exhibit “C” is a copy of a Final Judgment of Foreclosure and Sale, dated February 21, 2014 (the “Judgment”), issued in the Foreclosure Action in favor of the Trust.

6. Collectively annexed hereto as Exhibit “D” is a copy of an Amended Final Judgment of Foreclosure and Sale, dated June 3, 2016 (the “Amended Judgment”), issued in the Foreclosure Action in favor of the Trust, as well as the Report of Amount Due, dated March 23, 2016 (the “Report of Amount Due”), upon which the Amended Judgment is based.

7. Annexed hereto as Exhibit “E” is a copy of an Order Granting Motion In Part, dated December 29, 2017 (the “Partial Proceeds Order”) issued by United States Bankruptcy Court, Eastern District of New York (the “Bankruptcy Court”) under Case No. 16-45645 styled as In re Boysin Ralph Lorick and Cynthia Theresa Lorick (the “Bankruptcy Proceeding”).

8. Annexed hereto as Exhibit “F” is a copy of the Complaint, dated December 17, 2018, that Plaintiffs filed herein (the “Initial Complaint”).

9. Annexed hereto as Exhibit “G” is a copy of an Order dated April 29, 2019 (the “April 29, 2019 Order”) that this Court issued herein.

10. Collectively annexed hereto as Exhibit “H” are copies of the purported proof of service of process that Plaintiffs filed herein.

11. Annexed hereto as Exhibit “I” is a copy of the Amended Complaint dated February 11, 2020 (the “Amended Complaint”) that Plaintiffs filed herein.

12. Annexed hereto as Exhibit “J” is a copy of the SAC that Plaintiffs filed herein.

13. For the reasons set forth herein and in the accompanying Memorandum of Law, the Kilpatrick Defendants’ application should be granted in its entirety.

14. The Kilpatrick Defendants have not filed any prior application for the relief sought herein.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on June 1, 2020

/s/ Frederick L. Whitmer
FREDERICK L. WHITMER